HB 6526
Testimony of Gregory A. Sharp, Esq.
Murtha Cullina LLP
Commerce Committee
March 8, 2009

I am offering this testimony as a practicing environmental lawyer and a member of the Brownfields Working Group. I will focus on two provisions of HB 6526 which are important to remove existing impediments to remediation of Brownfields and other contaminated sites in Connecticut.

First, Section 5 would require that the Department of Environmental Protection amend the Remediation Standard Regulations ("RSRs") within three years of passage of the bill and review them every five years thereafter to keep them current going forward.

The RSRs are the backbone of all of the state's remediation programs, and they provide the yardstick that enables Licensed Environmental Professionals ("LEPs") to verify that sites meet the state's remediation goals. The regulations were first adopted in 1996, and, unfortunately, despite significant developments in the area of environmental remediation over the past 15 years, the Department has never updated them.

In 2006, the Commissioner convened an advisory committee to update the regulations. As a member of that committee, I was extremely disappointed that, after three years of effort, the committee was disbanded, and the proposed regulations were scrapped, despite consensus on most of the proposed revisions. Adopting Section 5 of HB 6526 would send a clear signal to the Department that revising the regulations is an urgent priority if Connecticut's backlogged Brownfields and Transfer Act sites are to move forward.

Three years is more than adequate for the new Commissioner to complete the first revision, particularly considering the substantial support for most of the previously drafted revisions which would streamline the remediation process, move sites forward, and minimize transaction costs.

Section 4 would clarify that the relevant date for determining what releases must be addressed by a certifying party at Transfer Act sites is the date of the transfer. This clarification is critical, because the Department has issued guidance indicating that the certifying party must address all releases at the site which have occurred prior to the date an LEP submits a verification confirming compliance with the RSRs.

The problem with the Department's position is that Sellers who sign as a certifying party on a Form III or IV must remediate any post-closing releases caused by the Buyer in order to avoid a rejection of the verification submitted by an LEP. Considering that it generally takes a decade or more to clean-up these sites, this requirement has the effect of forcing certifying Sellers in many cases to clean-up post-closing releases caused by the Buyer, if they wish to close out their Transfer Act obligations.

The status quo is not only unfair, but it is completely at odds with the customary contractual commitments of parties to such transactions in which Sellers agree to address pre-closing releases, and Buyers agree to address post-closing releases.

In summary, this change in the statute would make it clear that the law is neutral as to the parties' contractual obligations, and, in the case of certifications by Sellers, that Sellers and Buyers are each liable for their own releases, thereby placing the liability on the party causing the contamination.